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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

COMSAT CORPORATION

Petition for Partial Waiver

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CC Docket No. 96-45

OPPOSITION OF PANAMSAT CORPORATION

In its Universal Service proceeding, the Commission decided that any carrier that provides interstate service must contribute to the universal service fund based on both its interstate and international revenues.¹ In the above-captioned petition, Comsat Corporation ("Comsat") requests that it be granted a special exemption from this contribution requirement, allowing it — alone among its competitors — to contribute to universal service solely on the basis of its domestic revenues.

Comsat's request is unfair to U.S.-licensed satellite operators and international carriers, is inconsistent with the reasons underlying the Commission's decision to assess universal service contributions based on international revenues, is contrary to the public interest, and would undermine the viability of the universal service funding scheme. In addition, it ignores the fact that Comsat is now able to enter the U.S. domestic market, subject to certain conditions required to protect competition, and therefore it is within Comsat's power to correct the "inequity" that, in its view, justifies its request. For these reasons, PanAmSat Corporation ("PanAmSat"), by its attorneys, opposes Comsat's petition for partial waiver.

Comsat's petition attempts to resurrect a claim that Comsat made during the Commission's universal service rulemaking process. At that time, Comsat argued that it should not be required to contribute to universal service funding in

¹ Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776 at ¶¶ 779 (rel. May 8, 1997) ("Universal Service Report and Order").

light of its limited involvement in the U.S. interstate market.² Having failed in its effort to persuade the Commission to adopt a rule exempting it from a contribution requirement, Comsat now seeks to achieve the same goal through a special waiver.

Comsat Should Be Subject to the Same Rules As Its Competitors

Granting Comsat's request would be manifestly unfair to other U.S.-licensed international carriers, who must pay into the universal service fund based upon their interstate and international revenues. Contrary to its claim, Comsat is not alone in deriving a substantial portion of its revenues from international traffic. Yet by granting Comsat's request for special treatment, the Commission would leave Comsat's competitors subject to a full contribution burden while freeing Comsat almost completely from any contribution requirement.³ This would create a fundamental inequity in the Commission's treatment of carriers providing a mix of interstate and international services, in violation of both basic principles of fairness and the Telecommunications Act of 1996's express requirement that universal service contributions be equitable and non-discriminatory.⁴

Equally importantly, the Commission's rationale for assessing contributions on both interstate and international revenues applies with special force to Comsat. In its Universal Service Report and Order, the Commission concluded that it should adopt such a rule because "[c]ontributors that provide international telecommunications services benefit from universal service because they must either terminate or originate telecommunications on the domestic PSTN."⁵ Due to Intelsat's virtual monopoly on the provision via satellite of international PSTN services, international telephony contributes substantially to

² See Universal Service Report and Order, Appendix J, Summary of Comments in CC Docket No. 96-45, at ¶445 (Comsat argued that it should not be required to contribute to the universal service support mechanism at all or, at a minimum, that its contribution base should be limited to its domestic interstate revenues).

³ While Comsat would make universal service contributions based on its domestic revenues, by Comsat's own admission these revenues total less than one percent of Comsat's annual revenues, and more than ninety percent of them are exempt from assessment because they are received from other U.S. carrier-contributors. Comsat Petition at 7, 8.

⁴ 47 U.S.C. § 254(b)(4).

⁵ Universal Service Report and Order at ¶ 779.

Comsat's bottom line.⁶ Thus, with respect to its international traffic, Comsat — to the virtual exclusion of its satellite competitors — benefits from the continuation of universal service within the United States. As a result, it would defy logic for the Commission to exempt Comsat alone from the obligation to support fully the universal service program.

Comsat Already Provides Domestic Service and Whether It Provides Additional Domestic Service Is Within Its Hands

Comsat's primary claim in support of its request is that, because it historically has been barred from the domestic interstate market, it provides only very limited interstate services primarily involving U.S. offshore possessions.⁷ Comsat complains that, under the Commission's "broad definition" of interstate services, this "limited, international-type service" is fully subject to universal service funding obligations, and that the limited nature of its interstate offerings will result in a universal service bill that exceeds its total interstate revenues.⁸

As an initial matter, Comsat's claim that its domestic services are "international in character" and are to be treated as domestic, interstate traffic only due to a "broad" Commission definition of such traffic is patently false. The Communications Act's definition of "interstate" telecommunications clearly and expressly encompasses communications involving U.S. territories and possessions.⁹ The Joint Board and the Commission thus concluded that "interstate telecommunications services include telecommunications services among U.S. territories and possessions," "because such areas are expressly included within the [Communications Act's] definition of 'interstate.'"¹⁰

⁶ When separate international satellite systems first were authorized, the FCC prohibited them from carrying any traffic to or from the United States that was interconnected with the PSTN. This restriction was designed to protect Intelsat's public switched telephone services business from competition. Although this restriction was progressively liberalized, and was lifted in 1997, a variety of factors have enabled Intelsat to maintain its hegemony over satellite-delivered PSTN services. For example, at a time when the ability of separate systems to provide international PSTN services was limited, Comsat entered into long term contracts with its customers to provide such services. In addition, the dominant telephone company in many countries is also the Intelsat signatory or is commonly owned with the Intelsat signatory. This gives the telephone company an incentive to favor Intelsat over competing systems and, in the case of government-owned PTTs, the incentive and ability to restrict the market access of separate systems.

⁷ Comsat Petition at 4-7.

⁸ *Id.* at 5.

⁹ See 47 U.S.C. § 153(22).

¹⁰ Universal Service Report and Order at ¶ 778.

More importantly, Comsat's backward-looking claim that it has been excluded from the U.S. market ignores the crucial fact that, in November of 1997, the Commission ruled that Comsat may enter the U.S. domestic market as long as it is willing to waive its immunity from lawsuits and is able to demonstrate that its entry would promote competition or otherwise is in the public interest.¹¹ Comsat, therefore, is in control of its future and can itself resolve the inequity that, it claims, justifies its request for special relief.

If Comsat is willing to waive its privileges and immunities, it can expand its domestic, interstate offerings and, thereby, resolve what it regards as an imbalance between the level of its domestic interstate revenues and its universal service contribution requirement. If, however, Comsat chooses to continue to limit its domestic offerings, the fact that its universal service contribution requirement will exceed its domestic revenues will be the fault of no one but itself. Indeed, it will prove that Comsat derives substantial benefits from its privileges and immunities — a fact that Comsat has long denied — and, certainly, should not be a reason for further exempting Comsat from the burdens imposed on its competitors.

Comsat's Remaining Arguments Also Should Be Rejected

None of the other purported justifications cited by Comsat supports a grant of its request. Comsat's implicit threat to suspend service to its U.S. domestic customers if its request is not granted¹² demonstrates Comsat's lack of commitment to the public interest and to international universal service — despite Comsat's oft-repeated claim that any Intelsat restructuring must assiduously protect its financial health in light of its status as the international carrier of last resort. In no event should Comsat be allowed to use such a threat to render its claim for special treatment "in the public interest."

Similarly, Comsat's claim that it will be adversely affected in the international communications marketplace absent a waiver because its foreign

¹¹ Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Service in the United States ("DISCO II"), Report and Order, FCC 97-399, ¶ 126 (rel. Nov. 26, 1997).

¹² Comsat Petition at 7, 9-10.

competitors are not subject to a universal service funding obligation¹³ applies equally to all international carriers serving the U.S. interstate market and, in any event, is unavoidable.¹⁴ Granting Comsat special relief would merely exacerbate the existing inequity and further undermine free and fair international competition.¹⁵

Finally, Comsat's citation to the Commission's recent decision to exempt systems integrators and broadcasters from a universal service contribution requirement¹⁶ is irrelevant. In each of these cases, the Commission concluded that the entities involved are not in the business of providing telecommunications services or of competing with common carriers who provide such services: systems integrators provide primarily computer and information systems management services, and broadcasters provide video entertainment services.¹⁷ In Comsat's case, however, it clearly is engaged in the provision of — and will contribute to universal service solely with respect to — its telecommunications offerings. Moreover, these exemptions did not reduce universal service funding measurably, since the Commission reclassified these parties as end users and, therefore, will continue to receive universal service contributions from their service providers.¹⁸ In Comsat's case, there would be no similar means for recapturing the lost contributions.

¹³ Comsat Petition at 8-9.

¹⁴ As the Commission recognized in its Universal Service Report and Order, the current Communications Act does not authorize it to impose a universal service funding obligation on carriers serving the U.S. international but not the U.S. interstate market. Universal Service Report and Order at ¶ 779.

¹⁵ It should be noted that former Commissioner Chong objected generally to requiring carrier contributions for international revenues on the ground that such a decision would place carriers serving the U.S. interstate market at a competitive disadvantage in the international marketplace. Contrary to the impression created by Comsat's petition, she did not object to the contribution requirement solely as it applied to Comsat; rather, Comsat was merely an example of a broader problem. Universal Service Report and Order, Separate Statement of Commissioner Rachelle B. Chong, Concurring in Part and Dissenting in Part, at 3.

¹⁶ Comsat Petition at n.15.

¹⁷ Federal-State Joint Board on Universal Service, Fourth Order on Reconsideration/Report and Order, CC Docket No. 96-45, 1997 FCC Lexis 7229, at ¶¶ 279, 283 (rel. Dec. 30, 1997). Indeed, to the extent that this generality does not apply, these entities are — or may become — subject to a contribution requirement. *Id.* at ¶ 279 (systems integrators who derive five or more percent of their revenues from the provision of telecommunications are not exempt), ¶ 283 (to the extent that broadcasters provide telecommunications services over DTV facilities, they may be required to contribute to universal service).

¹⁸ *Id.* at ¶¶ 281, 283.

CONCLUSION

For all of the above reasons, a grant of Comsat's request would be fundamentally inequitable, inconsistent with the reasons underlying the Commission's current policy governing universal service contributions, and contrary to the public interest. In addition, a grant would undermine the viability of the universal service system. Not only would it deprive the universal service fund of nearly \$5 million in 1998 alone,¹⁹ it would permanently exempt Comsat from a funding obligation based on its international service revenues. In addition, it likely would lead to a host of petitions by other carriers seeking special exemptions, thereby imposing a substantial burden on the Commission and potentially threatening the breadth of the current universal service funding requirement and, in turn, imposing higher and less equitable costs on those carriers who do not receive special treatment.

Respectfully submitted,

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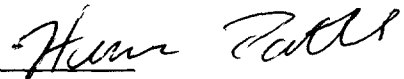
¹⁹ Comsat Petition at 7.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Opposition of PanAmSat Corporation was sent by first-class mail, postage prepaid, this 9th day of February, 1998, to each of the following:

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/s/ Hema Patel
Hema Patel

A handwritten signature in cursive script, appearing to read "Hema Patel", written over a horizontal line.